

TRAN (Migration) [2018] AATA 4374 (21 September 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Thanh Hai Tran

CASE NUMBER: 1719911

DIBP REFERENCE(S): BCC2017/1348514

MEMBER: Moira Brophy

DATE: 21 September 2018

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 21 September 2018 at 11:54am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner(Temporary)) – whether Schedule 3 criteria should be waived – five year de facto relationship – working with sponsor on farm – Tribunal not satisfied either party will suffer emotional or physical hardship – growing acceptance of LGBTI persons in home country – credibility issues – parties claimed that they did not know how to lodge a partner visa – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 65, 359AA

Migration Regulations 1994 (Cth), Schedule 2 cl 820.211 Schedule 3 criteria 3001, 3003, 3004

CASES

Babici v MIMA (2005) 141 FCR 285

MZYPZ v MIAC [2012] FCA 478

Waensila v MIBP [2016] FCAFC 32

STATEMENT OF DECISION AND REASONS

1. ISSUE

2. The issue in the present case is whether there were compelling reasons for not applying the Schedule 3 requirement that the applicant be the holder of a substantive visa at the time of application or make the application within 28 days of being the holder of a substantive visa.

APPLICATION FOR REVIEW

3. This is an application for review of a decision of a delegate of the Minister for Immigration on 10 August 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
4. The applicant applied for the visa on 11 April 2017 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
5. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211 because the applicant was not the holder of a substantive visa at the time of application and there were no compelling reasons to waive the Schedule 3 criteria.
6. The applicant, Mr Thanh Hai Tran appeared before the Tribunal on 6 September 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor Mr Minh Sang Nguyen and from Mrs My Le Tran and Mr Quoc An Ta. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
7. The applicant was represented in relation to the review by his registered migration agent.
8. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

9. BACKGROUND

10. The applicant, Mr Thanh Hai Tran was born in Vietnam and he is currently 41 years of age. He was previously married to Ngoc Hoang Tran Nham in the period from 30 October 2000 to 10 March 2010. There were two children of the relationship, a daughter born in 2001 and a son born in 2007. His parents, one brother and two sisters reside in Vietnam.
11. The applicant arrived in Australia on 8 August 2008 on a subclass 676 visa (Tourist) which ceased on 8 November 2008. He was granted two further tourist visas with his last visa expiring on 8 August 2009. The application for a subclass 820 Partner (Temporary) (Class UK) was lodged on 11 April 2017.
12. The applicant's sponsor was born in Vietnam and is currently 48 years of age. In the application he stated he was previously married to Thi Hoa Nguyen in the period from 20 February 2010 to 1 March 2014. He declared two children from this relationship, a daughter born in 2009 and a son born in 2011. His parents are deceased, and he has one sister and two brothers in Fiji.

13. On their application the parties stated they met on 10 February 2012 in Bundaberg, Qld. They committed to a shared life together on 5 January 2014 when they commenced a de facto relationship.
14. In the Record of Decision the delegate said he did not regard the genuineness of the relationship and the effects of separation on the relationship to be compelling reasons to waive the Schedule 3 requirements.
15. Prior to the hearing at the Tribunal the applicant provided the following documentation: statements and statutory declarations attesting to the genuineness of the relationship, evidence of a joint bank account, evidence of shared travel and accommodation, a submission and photographs.

16. EVIDENCE GIVEN AT HEARING

17. Evidence of Applicant

18. The applicant told the Tribunal that he was currently residing with the sponsor at Carnarvon in Western Australia. The applicant said he had lived there for 5 ½ years. They lived on 22 acres of farming land and they grew tomatoes chillies and peas. He said that the sponsor had been leasing the land before they met. The rent for the property is \$25,000 per annum and that is paid on a six monthly basis. The sponsor pays the rent by cheque from an account in his name which the applicant is not able to access. He said that they also have a joint account. He makes no contribution to their living costs as he is not in receipt of an income. He said the sponsor is currently meeting all his financial needs.
19. The applicant said he came to Australia on a holiday visa. He said he owned a motorcycle business in Vietnam and he came here to do market research. He said while he was here the business went into bankruptcy. He had left his wife in charge of the business. His secretary had contacted him to tell him that his investment in the company was reduced. When asked who the investors in the company were he said it was him who had invested in the company and his wife had taken money out. He discovered at this time that she was involved in another relationship. He said they had been married for some eight years. The Tribunal put to the applicant that he had in fact come to Australia intending to stay but he did not answer that question. The applicant said he had married to comply with the wishes of his family. He was not attracted to the person he was married to and he had not been fulfilling his role in the sexual relations between he and his wife. He had not realised his wife had a boyfriend until he had come to Australia. After all that has happened he said he would not be able to return to his past life in Vietnam. He said the thought of return makes him feel unhappy and sad as he does not want to go back. He now understands that he is attracted to males not females.
20. The applicant said that he had been working illegally in Australia at the time when he met the sponsor but he was now no longer working.
21. When asked about his family in Vietnam the applicant said that he has an older brother that he has not been in recent contact with and his brother has no idea of his sexuality. He has two younger sisters in Vietnam and he is in regular contact with one of his sisters who is aware of his sexuality. He said his parents are still in Vietnam and he has a good relationship with them. He has regular contact with them and they are aware of his sexuality.
22. When asked about his children he said that he has two children in Vietnam but he does not have contact with them. He has not had contact with them since he came to Australia in 2008. When asked by the Tribunal he said his children do not maintain contact with any of his family including his parents.

23. The applicant said he has not been back to Vietnam since he left in 2008.
24. The applicant said he is in good health and he does not see a doctor for any health problems on a regular basis. He last had a general health check-up seven or eight weeks ago and everything was okay. He is not on any regular medication. He takes Panadol from time to time.
25. The applicant said that he did not understand the implications of being in Australia without a valid visa. He attributed this to the fact that he was living in a remote community and they did not get news of immigration matters in that area. He said he was not in contact with the immigration department as he was scared of them.
26. The applicant said he had been detained because of a traffic infringement and put into detention. While he was in detention he had been advised of his right to apply for a Partner visa. Prior to that he had not known about Partner visas.
27. The applicant said he had not been in trouble with the authorities in Vietnam while he was living there.

28. Evidence of sponsor

29. The sponsor said he had come to Australia in 1994 having been sponsored by his then wife. The sponsor said he had been married three times. When it was put to him that he had not declared three marriages on the application he said that he thought he only had to declare marriages where there were children. He declared that he has two children who are currently aged nine and seven and they were of the relationship with his last wife. The sponsor said that he does not have any contact with his children. They live in Melbourne. He pays child support through the Child Support Agency.
30. The sponsor said that he has lived in Carnarvon since 2012. He lives with the visa applicant on a 22 acre farm where he grows tomatoes, chillies, peas, rock melons and watermelons. He said that the lease on the property is in his name alone. He operates the business as a sole trader. The visa applicant is not part of his business and does not receive an income from that business. The rent on the property is \$55,000 per annum and he pays that in six monthly instalments.
31. When asked when he had last travelled overseas the sponsor said that he was last in Vietnam for 10 days in 2014 and that he travelled alone. Under section 359AA of the Act the Tribunal put to him that his evidence was not consistent with records of his movements held by the Department. It was put to him that he had in fact been out of Australia in 2015, in 2015/2016 and again in 2016. He said he had been to visit the parents of the visa applicant on one occasion.
32. The sponsor said that he still had siblings in Vietnam and he has two older sisters and three younger sisters who were in Australia. He said his siblings in Australia all knew his partner and were aware of their relationship.
33. When asked by the Tribunal the sponsor said that he was in good health, he has no ongoing health issues and he does not take medication.
34. When asked what the sponsor considered to be the compelling circumstances in this case the sponsor said that he had endured the loss of his wife and children and now he had found a partner who cared for him and had faith in him. He could not bear to lose him. He said prior to meeting the visa applicant he was desperate and life had no meaning but he is now cared

for and looked after by the applicant. He asked the Tribunal to waive the requirements to allow them to stay together.

35. Evidence of Mrs My Le Tran

36. The witness told the Tribunal that she knows the visa applicant through the sponsor. She had met the visa applicant three months ago and she said it was obvious that the visa applicant and the sponsor were in love with each other. She wanted them to be given the opportunity to stay together as she said she liked them and considered them to be good for each other.

37. Evidence of Mr Quoc An Ta

38. The witness said that he had known the sponsor for the past 20 years and he knew that he was gay. He said he had met him when they had worked together. He said that he sees him about once each year and he had met the visa applicant three or four years ago. He met him in Sydney and he has met him about four times. He wanted to see them to be able to stay together as they were happy.

CONSIDERATION OF CLAIMS AND EVIDENCE

39. In making its findings, the Tribunal has considered documents contained in the Department and Tribunal files and oral evidence provided by the applicant and the applicant's sponsor and their witnesses at the hearing.

Does the applicant meet Schedule 3 criteria, or should those criteria be waived?

40. An applicant who is not the holder of a substantive visa at the time of application must meet certain criteria in Schedule 3 to the Regulations. With limited exceptions not relevant to this case, he or she must satisfy Schedule 3 criteria 3001, 3003, and 3004 unless the Minister is satisfied that there are compelling reasons for not applying those criteria: cl.820.211(2)(d).
41. It is not in dispute that the applicant in the present case did not have a substantive visa at the time of application. As the applicant did not enter Australia as the holder of a Subclass 995 visa or special purpose visa, the issue in the present case is whether the applicant satisfies the Schedule 3 criteria unless there are compelling reasons for not applying those criteria. These criteria are set out in the attachment to this decision.

Criterion 3001

42. In order to satisfy criterion 3001, the application for the visa must have been lodged within 28 days of the relevant day. The 'relevant day' is defined in 3001(2), as set out in the attachment to this decision.
43. The Tribunal finds the applicant applied for the Partner visa on 11 April 2017 and he was not the holder of a valid visa i.e. a substantive visa at the time.
44. In order to satisfy criterion 3001, the application for the visa must have been lodged within 28 days of the relevant day. The 'relevant day' is defined in 3001(2), as set out in the attachment to this decision. The relevant day in the present case is the day that the applicant last held a substantive or criminal justice visa, being 8 August 2009.
45. As the application for the visa was not made within 28 days of the relevant day, the Tribunal finds that the applicant does not satisfy criterion 3001.

Compelling reasons

46. As the Tribunal has found that the applicant does not meet the relevant Schedule 3 criteria, it is required to consider whether there are compelling reasons for not applying the criteria.
47. The expression 'compelling reasons' is not defined for these purposes. However, the reasons should be sufficiently convincing to move the decision-maker to exercise its discretion to waive the requisite criteria and the circumstances must be sufficiently powerful to lead a decision-maker to make a positive finding in favour of waiving the required criteria: *MZYPZ v MIAC* [2012] FCA 478 at [10]; *Babicci v MIMIA* (2005) 141 FCR 285 at [24]. Circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made: *Waensila v MIBP* [2016] FCAFC 32.
48. The Tribunal has also had regard to policy guidance in the Department's Procedures Advice Manual (PAM 3) which states that the intent of the waiver provisions is to allow persons whose circumstances are genuinely compelling to regularise their status. The provisions are not intended to give, or be perceived to give, an unfair advantage to persons who fail to comply with their visa conditions or deliberately manipulate their circumstances to give rise to compelling reasons.
49. The Tribunal is not bound by Department policy. What amounts to compelling reasons in each case is a question of fact, having regard to all the circumstances of the case. To find whether compelling circumstances exist, the Tribunal is required to look at all of the circumstances of the case.

50. Effect of separation on relationship

51. The Tribunal has not made any critical assessment of whether, at the time of the application or at the time of this decision, the parties were in and continued to be in a genuine, continuing and exclusive relationship. The Tribunal has accepted at face value the claims made by the parties that they were and continue to be in a genuine relationship together and the circumstances of that claimed relationship for the purposes of this decision.
52. The criteria in cl.820.211(2)(a) is that the applicant is the spouse or de facto partner of the sponsoring partner. This, in part, requires the applicant and the sponsor to be in a genuine, continuing and exclusive relationship. If an applicant does not hold a substantive visa and does not meet the Schedule 3 criteria, the requirement in cl.820.211(2)(d)(ii) to provide compelling reasons for not applying those criteria is in addition to the criteria in cl.820.211(2)(a). Accordingly, simply the fact that the parties are in a genuine and continuing relationship is not of itself a compelling reason for not applying the Schedule 3 criteria as it is already a criteria which must be satisfied in order to meet the criteria in cl.820.211(2)(a). If the relationship itself can be considered a compelling reason for not applying the Schedule 3 criteria, it must be the particular aspects of the relationship which must provide a compelling reason for not applying the Schedule 3 criteria and not simply the fact that the parties are in a relationship.
53. The Tribunal has considered the evidence in this case and is not satisfied that there are particular aspects of the relationship that would be considered a compelling reason for not applying the criteria.
54. All parties in a genuine relationship where an application for a Partner visa is filed offshore must face some degree of emotional and financial hardship. This includes the period of separation while the Partner visa application is processed and the associated costs of separate households.

55.

56. Whilst the Tribunal appreciates a period of separation will present some difficulties for the parties the Tribunal does not consider that the subsequent difficulties that may arise for the parties during a separation were difficulties that were not reasonably foreseeable at the time of entering the relationship and choosing to lodge an application in Australia at a time when the applicant did not have a valid visa.
57. The Tribunal does not consider that emotional difficulties that may arise for the relationship during a separation while waiting for a visa application to be processed is a compelling reason not to apply the Schedule 3 criteria.

58. Long term relationship

59. The Tribunal accepts at face value the claim the parties have been in a relationship for more than five years and that the applicant is committed to the relationship with the sponsor. The Tribunal is mindful of the reasoning in *Waensila* and has considered if the relationship is now long standing and if this, and being in a genuine relationship, amount to compelling reasons. However, the Tribunal is of the view that the majority of applicants for a partner visa consider themselves to be in a genuine relationship and indeed it is an essential requirement for the grant of the visa. The Tribunal is not persuaded that satisfying an essential requirement for the grant of the visa amounts to a compelling reason. Taking into account the evidence given at the time of hearing and evidence submitted prior to hearing, the Tribunal is not satisfied that in this instance the existence of a long standing relationship constitutes a compelling reason for not applying Schedule 3 criteria.

60. Effect of lack of knowledge

61. The applicant told the Tribunal that he and the sponsor did not know how to go about lodging a partner application and so they had not lodged an application earlier. He said they lived in a remote part of Western Australia and did not get the news. The applicant further said he was afraid of the Department and immigration officials so he did not contact them to seek advice. They were not aware that once the applicant's substantive visa had lapsed there were additional criteria they would have to satisfy if they were to be able to lodge their application onshore. Whilst appreciating that the immigration process is intimidating and inadequate knowledge can lengthen what can be a very difficult process the accessing of advice is essentially a matter for the applicant. It was open to the applicant to obtain advice from an accredited migration agent at any time.
62. The Tribunal does not accept lack of knowledge of the immigration processes is a compelling reason to not apply the Schedule 3 criteria.

63. Fear of returning to Vietnam

64. The applicant told the Tribunal that homosexuality was not accepted in Vietnam and he feared for his personal safety if he were to return there. The Tribunal considered these submissions. The applicant told the Tribunal he had previously been in a heterosexual relationship. He had entered the marriage to comply with his parents' wishes but he had not been able to 'fulfil his role in sexual relations'. He said he was attracted to males not females and he was distressed at the thought of returning to a country where that was not accepted. The applicant said his parents and two sisters were now aware of his sexuality and the relationship he is in. He has no contact with his older brother so he had not informed him of his sexual preference.

65.

66. The Tribunal was mindful of the advice given in the DFAT Country Information Report issued by the Department of Foreign Affairs and Trade on 21 June 2017.

Sexual Orientation and Gender Identity

3.37 The law does not address discrimination based on sexual orientation or gender identity. Same-sex sexual activity is legal in Vietnam provided it complies with other legislation also applicable to heterosexual activity, consensual between adults. The revised 2014 Law on Marriage and Family (effective 1 January 2015) removed a ban on same sex marriage. However, under the new law the Government does not formally recognise same sex marriages, meaning that same-sex couples are not afforded the legal protections that heterosexual married couples enjoy.

3.38 The revised Civil Code, passed by the National Assembly in November 2015, allows transgender individuals the right to change their sex, access health care, and change their gender identity on official documents if they have undergone sex re-assignment surgery. Article 36: Redefine sex, applies to intersex individuals; Article 37: Sex change, applies to individuals who want to change their sex assigned at birth. The prerequisite of sex reassignment surgery in order to access the rights has been criticised by some international NGOs; however overall the revisions are seen as a small but significant step towards recognition and acceptance.

3.39 There has been a growing official acceptance of the rights of lesbian, gay, bisexual, transgender/transsexual and intersex (LGBTI) people Vietnam. Vietnam's first gay pride rally, Viet Pride, took place in 2012. It has since become an annual event each August; celebrated in 30 provinces in 2016, with the largest turnout in Hanoi. However, societal discrimination remains high, especially within families. Unlike other South-East Asian countries, Vietnam does not have a 'gay scene' in major cities, with only one known gay club in Hanoi, almost solely frequented by gay men. Young LGBTI persons frequently connect through online social platforms, such as Facebook groups and blogs.

3.40 DFAT assesses that the risk of official discrimination against LGBTI people in Vietnam is low. Although Vietnam's legislative framework is relatively progressive, there is little awareness and understanding of alternate sexual orientations and gender identities. DFAT assesses that the risk of societal discrimination against LGBTI people in Vietnam is moderate, given the traditional and patriarchal attitudes amongst Vietnamese families and society. DFAT has been advised by credible in-country contacts of cases involving parents seeking medical treatment for their child's homosexuality, in the form of psychiatry and prescription drugs.

67. The Tribunal has carefully considered this evidence and while appreciative of the difficulties that may arise in some countries, the claims by the applicant that he feared for his safety if he were to return to Vietnam are in the Tribunal's view speculative. That being the case the Tribunal does not consider the fears of the applicant for his personal safety arising out of his concerns of the risk to him in Vietnam because of his sexuality to be a compelling circumstance.

68. Overall Assessment

69. Having considered all of the above issues the Tribunal is not satisfied that these matters, separately and cumulatively, are compelling reasons to not apply the Schedule 3 criteria.
70. The Tribunal acknowledges that the sponsor would strongly prefer that the applicant remains in Australia. However, the Tribunal is not satisfied on the basis of the evidence before it that either party will suffer emotional or physical hardship if the applicant returns to Vietnam to apply for the visa.
71. The Tribunal accepts that the parties will understandably be unhappy about being apart while the applicant applies for the visa offshore. However, the Tribunal does not consider

that unhappiness resulting from separation, potentially for a limited period, is a compelling reason to not apply the criteria. Many couples are required to experience temporary separation at some stage in their relationship. The Tribunal is satisfied that the parties can continue to provide each other with emotional support when they are apart using the range of communication tools that are available.

72. The Tribunal is not satisfied that there are compelling reasons for not applying the Schedule 3 criteria. Accordingly, the applicant does not meet cl.820.211(2)(d)(ii).
73. In relation to cl.820.211(3) to (9), there is no evidence before the Tribunal that the applicant meets the requirements set out in these subclauses.
74. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

75. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Moira Brophy
Member

ATTACHMENT - Extract from Migration Regulations 1994

Schedule 3

3001

- (1) The application is validly made within 28 days after the relevant day (within the meaning of subclause (2)).
- (2) For the purposes of subclause (1) and of clause 3002, the relevant day, in relation to an applicant, is:
 - (a) if the applicant held an entry permit that was valid up to and including 31 August 1994 but has not subsequently been the holder of a substantive visa — 1 September 1994; or
 - (b) if the applicant became an illegal entrant before 1 September 1994 (whether or not clause 6002 in Schedule 6 of the Migration (1993) Regulations applied or section 195 of the Act applies) and has not, at any time on or after 1 September 1994, been the holder of a substantive visa — the day when the applicant last became an illegal entrant; or
 - (c) if the applicant:
 - (i) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or
 - (ii) entered Australia unlawfully on or after 1 September 1994;whichever is the later of:
 - (iii) the last day when the applicant held a substantive or criminal justice visa; or
 - (iv) the day when the applicant last entered Australia unlawfully; or
 - (d) if the last substantive visa held by the applicant was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation — the later of:
 - (i) the day when that last substantive visa ceased to be in effect; and
 - (ii) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.

3003

If:

- (a) the applicant has not, on or after 1 September 1994, been the holder of a substantive visa; and
- (b) on 31 August 1994, the applicant was either:
 - (i) an illegal entrant; or
 - (ii) the holder of an entry permit that was not valid beyond 31 August 1994;

the Minister is satisfied that:

- (c) the applicant last became an illegal entrant, or, in the case of a person referred to in subparagraph (b)(ii), last became a person in Australia without a substantive visa, because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with the conditions that apply or applied to:
 - (i) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (ii) any subsequent bridging visa; and
- (f) the applicant would have been entitled to be granted an entry permit equivalent to a visa of the class applied for if the applicant had applied for the entry permit immediately before last becoming an illegal entrant or, in the case of a person referred to in subparagraph (b)(ii), if the applicant had applied for the entry permit on 31 August 1994; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) the last entry permit (if any) held by the applicant was not granted subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.

If the applicant:

- (a) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or
- (b) entered Australia unlawfully on or after 1 September 1994 and has not subsequently been granted a substantive visa;

the Minister is satisfied that:

- (c) the applicant is not the holder of a substantive visa because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with:
 - (i) the conditions that apply or applied to:
 - (A) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (B) any subsequent bridging visa; or
 - (ii) the conditions that apply or applied to:
 - (A) the last of any substantive visas held by the applicant (other than a condition of which the applicant was in breach solely because the visa ceased to be in effect); and
 - (B) any subsequent bridging visa; and
- (f) either:
 - (i) in the case of an applicant referred to in paragraph (a) — the applicant would have been entitled to be granted a visa of the class applied for if the applicant had applied for the visa on the day when the applicant last held a substantive or criminal justice visa; or
 - (ii) in the case of an applicant referred to in paragraph (b) — the applicant would have satisfied the criteria (other than any Schedule 3 criteria) for the grant of a visa of the class applied for on the day when the applicant last entered Australia unlawfully; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) if the last visa (if any) held by the applicant was a transitional (temporary) visa, that visa was not subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.